

MONTANA LEGISLATIVE HISTORY

Chapter 253 ~~2003~~ 2003

Bill H _____ S 141 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 3/11 _____ C

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Date Out 3/11 _____ C

S. Committee on Judiciary

Hearing Date(s) 1/16 _____ C

1/22 _____ C

_____ C

_____ C

1/22

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

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4/26 SIGNED BY GOVERNOR
 4/28 CHAPTER NUMBER ASSIGNED
 CHAPTER NUMBER 524
 EFFECTIVE DATE: 4/26/2003 - ALL SECTIONS

SB 139 INTRODUCED BY SHEA

LC0124 DRAFTER: LANE

ADOPT INTERSTATE COMPACT FOR JUVENILES

BY REQUEST OF DEPARTMENT OF CORRECTIONS

12/24	INTRODUCED		
12/30	REFERRED TO JUDICIARY		
12/31	FISCAL NOTE REQUESTED		
1/10	FISCAL NOTE RECEIVED		
1/10	FISCAL NOTE SIGNED		
1/13	FISCAL NOTE PRINTED		
1/16	HEARING		
1/22	COMMITTEE EXECUTIVE ACTION—BILL PASSED	5	4
1/22	COMMITTEE REPORT—BILL PASSED		
1/23	2ND READING PASSED	46	4
1/24	3RD READING PASSED	45	4
	TRANSMITTED TO HOUSE		
3/07	REFERRED TO JUDICIARY		
3/11	HEARING		
3/12	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	18	0
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/17	PLACED ON CONSENT CALENDAR		
3/18	3RD READING CONCURRED	99	0
	RETURNED TO SENATE		
3/19	SENT TO ENROLLING		
3/20	RETURNED FROM ENROLLING		
3/25	SIGNED BY PRESIDENT		
3/26	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
4/01	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 194		
	EFFECTIVE DATE: EFFECTIVE UPON RECEIPT OF WRITTEN NOTIFICATION BY THE		
	SECRETARY OF STATE FROM THE DIRECTOR OF THE DEPARTMENT OF		
	CORRECTIONS THAT THE COMPACT HAS BEEN LEGISLATIVELY ENACTED IN		
	LAW BY THE 35TH COMPACTING STATE - ALL SECTIONS		

SB 140 INTRODUCED BY MAHLUM

LC0485 DRAFTER: CAMPBELL

REVISE PENALTY PROVISIONS OF SECURITIES CODE

BY REQUEST OF STATE AUDITOR

12/24	INTRODUCED		
12/30	REFERRED TO BUSINESS AND LABOR		
12/31	FISCAL NOTE REQUESTED		
1/10	FISCAL NOTE RECEIVED		
1/10	FISCAL NOTE SIGNED		
1/13	FISCAL NOTE PRINTED		
1/16	HEARING		
2/17	INDEFINITELY POSTPONED IN COMMITTEE		
2/28	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		

SB 141 INTRODUCED BY WHEAT

LC0161 DRAFTER: LANE

CLARIFY WHEN CONFIDENTIAL CRIMINAL JUSTICE INFORMATION IS NO LONGER
 CONFIDENTIAL

BY REQUEST OF DEPARTMENT OF JUSTICE

12/24	INTRODUCED		
12/30	REFERRED TO JUDICIARY		
1/16	HEARING		
1/22	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	9	0
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED	48	0
1/25	3RD READING PASSED	48	0

SENATE BILLS AND RESOLUTIONS

75

	TRANSMITTED TO HOUSE		
3/07	REFERRED TO JUDICIARY		
3/11	HEARING		
3/11	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	17	1
3/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/15	2ND READING CONCURRED	98	2
3/17	3RD READING CONCURRED	95	3
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING HOUSE AMENDMENTS CONCURRED ON VOICE VOTE	50	0
3/20	3RD READING PASSED AS AMENDED BY HOUSE	49	0
3/22	SENT TO ENROLLING		
3/25	RETURNED FROM ENROLLING		
3/27	SIGNED BY PRESIDENT		
3/28	SIGNED BY SPEAKER		
3/31	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
4/08	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 253		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

SB 142 INTRODUCED BY MCNUTT

LC0255 DRAFTER: PETESCH

CLARIFY RELATIONSHIP OF PUBLIC DOCUMENTS WITH ELECTRONIC INFORMATION SYSTEMS

BY REQUEST OF DEPARTMENT OF ADMINISTRATION

12/24	INTRODUCED		
12/30	REFERRED TO STATE ADMINISTRATION		
1/17	HEARING		
1/25	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	3	2
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/29	2ND READING PASSED AS AMENDED ON VOICE VOTE	49	0
1/31	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
3/07	REFERRED TO STATE ADMINISTRATION		
	DIED IN STANDING COMMITTEE		

SB 143 INTRODUCED BY BOHLINGER

LC0482 DRAFTER: CAMPBELL

CRITERIA FOR ANNUITIES SOLD BY CHARITABLE ORGANIZATIONS

BY REQUEST OF STATE AUDITOR

12/24	INTRODUCED		
12/30	REFERRED TO BUSINESS AND LABOR		
12/31	FISCAL NOTE REQUESTED		
1/08	FISCAL NOTE RECEIVED		
1/08	FISCAL NOTE SIGNED		
1/08	FISCAL NOTE PRINTED		
1/09	HEARING		
1/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	10	0
1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED	33	17
1/25	3RD READING PASSED	33	16
	TRANSMITTED TO HOUSE		
3/07	REFERRED TO BUSINESS AND LABOR		
3/11	HEARING		
3/17	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	12	6
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/19	2ND READING CONCURRED AS AMENDED	86	14
3/22	3RD READING CONCURRED	89	9
	RETURNED TO SENATE WITH AMENDMENTS		
4/07	2ND READING HOUSE AMENDMENTS CONCURRED ON VOICE VOTE	49	0
4/08	3RD READING PASSED AS AMENDED BY HOUSE	42	7
4/08	SENT TO ENROLLING		
4/09	RETURNED FROM ENROLLING		
4/11	SIGNED BY PRESIDENT		
4/11	SIGNED BY SPEAKER		
4/14	TRANSMITTED TO GOVERNOR		
4/24	SIGNED BY GOVERNOR		

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SENATE BILL NO. 141
INTRODUCED BY M. WHEAT
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE RELEASE OF CRIMINAL JUSTICE INFORMATION TO FIRE SERVICE AGENCIES AND FIRE MARSHALS REGARDING THE CRIMINAL INVESTIGATION OF A FIRE; PROVIDING A PROCEDURE FOR A PROSECUTOR TO PETITION THE COURT FOR RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION IN CERTAIN CASES; AMENDING SECTIONS 44-5-103 AND 44-5-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

- (1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.
- (2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.
- (3) "Confidential criminal justice information" means:
 - (a) criminal investigative information;
 - (b) criminal intelligence information;
 - (c) fingerprints and photographs;
 - (d) criminal justice information or records made confidential by law; and
 - (e) any other criminal justice information not clearly defined as public criminal justice information.
- (4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and

1 release. It includes identification information, such as fingerprint records or photographs, unless the information
2 is obtained for purposes other than the administration of criminal justice.

3 (b) Criminal history record information does not include:

4 (i) records of traffic offenses maintained by the department of justice; or

5 (ii) court records.

6 (5) (a) "Criminal intelligence information" means information associated with an identifiable individual,
7 group, organization, or event compiled by a criminal justice agency:

8 (i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting
9 potential criminal operation, or producing an estimate of future major criminal activities; or

10 (ii) in relation to the reliability of information, including information derived from reports of informants or
11 investigators or from any type of surveillance.

12 (b) Criminal intelligence information does not include information relating to political surveillance or
13 criminal investigative information.

14 (6) (a) "Criminal investigative information" means information associated with an individual, group,
15 organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a
16 crime or crimes. It includes information about a crime or crimes derived from reports of informants or
17 investigators or from any type of surveillance.

18 (b) ~~¶ The term~~ does not include criminal intelligence information.

19 (7) "Criminal justice agency" means:

20 (a) any court with criminal jurisdiction;

21 (b) any federal, state, or local government agency designated by statute or by a governor's executive
22 order to perform as its principal function the administration of criminal justice, including a fire agency or fire
23 marshal that conducts criminal investigations of fires;

24 (c) any local government agency not included under subsection (7)(b) that performs as its principal
25 function the administration of criminal justice pursuant to an ordinance or local executive order; or

26 (d) any agency of a foreign nation that has been designated by that nation's law or chief executive
27 officer to perform as its principal function the administration of criminal justice and that has been approved for
28 the receipt of criminal justice information by the Montana attorney general, who may consult with the United
29 States department of justice.

30 (8) (a) "Criminal justice information" means information relating to criminal justice collected, processed,

1 or preserved by a criminal justice agency.

2 (b) ¶ The term does not include the administrative records of a criminal justice agency.

3 (9) "Criminal justice information system" means a system, automated or manual, operated by foreign,
4 federal, regional, state, or local governments or governmental organizations for collecting, processing,
5 preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and
6 agreements.

7 (10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have
8 terminated and describing the nature of the termination or information relating to sentencing, correctional
9 supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal
10 proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to
11 bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

12 (b) Particular dispositions include but are not limited to:

13 (i) conviction at trial or on a plea of guilty;

14 (ii) acquittal;

15 (iii) acquittal by reason of mental disease or defect;

16 (iv) acquittal by reason of mental incompetence;

17 (v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

18 (vi) deferred imposition of sentence with any conditions of deferral;

19 (vii) nolle prosequi;

20 (viii) a nolo contendere plea;

21 (ix) deferred prosecution or diversion;

22 (x) bond forfeiture;

23 (xi) death;

24 (xii) release as a result of a successful collateral attack;

25 (xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action

26 for determination of mental incompetence or mental illness;

27 (xiv) a finding of civil incompetence or mental illness;

28 (xv) exercise of executive clemency;

29 (xvi) correctional placement on probation or parole or release; or

30 (xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

(a) information made public by law;

(b) information of court records and proceedings;

(c) information of convictions, deferred sentences, and deferred prosecutions;

(d) information of postconviction proceedings and status;

(e) information originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 2. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information -- procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of

1 individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential
2 criminal justice information under this subsection includes receiving investigative information from and sharing
3 investigative information with a fire service agency or fire marshal concerning the criminal investigation of a fire.

4 (2) If the prosecutor determines that dissemination of confidential criminal justice information would not
5 jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim
6 of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the
7 prosecutor.

8 (3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential
9 criminal justice information assumes equal responsibility for the security of the information with the originating
10 agency. Whenever confidential criminal justice information is disseminated, it must be designated as
11 confidential.

12 (4) The county attorney or the county attorney's designee is authorized to receive confidential criminal
13 justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The
14 county attorney or the county attorney's designee may, in that person's discretion, disclose information
15 determined necessary to the goals of the review team. The review team and the county attorney or the designee
16 shall maintain the confidentiality of the information.

17 (5) (a) If a prosecutor receives a written request for release of confidential criminal justice information
18 relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal
19 prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a
20 declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory
21 Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

22 (i) file the action in the name of the city or county that the prosecutor represents and describe the city's
23 or county's interest;

24 (ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice
25 information and anyone affected by release of the information;

26 (iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the
27 file with the court pursuant to the provisions of Title 27, chapter 8;

28 (iv) request the court to:

29 (A) conduct an in camera review of the confidential criminal justice information to determine whether
30 the demands of individual privacy do not clearly exceed the merits of public disclosure; and

1 (B) order the release to the requesting party defendant whatever portion of the investigative information
2 or edited version of the information the court determines appropriate.

3 (b) In making an order authorizing the release of information under subsection (5)(a), the court shall
4 make a written finding that the demands of individual privacy do not clearly exceed the merits of public
5 disclosure and make its order sufficiently broad to authorize, upon payment of reasonable reproduction costs,
6 the release of appropriate portions of the edited or complete confidential criminal justice information to interested
7 parties that are not joined in the litigation.

8 (c) In an action filed for the court-ordered release of confidential criminal justice information under
9 subsection (5)(a), the parties shall bear their respective costs and attorney fees."

10
11 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

12
13 NEW SECTION. Section 4. Applicability. [This act] applies to any request for confidential criminal
14 justice information made on or after [the effective date of this act].

15 - END -

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 16, 2003 at
8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note:

Audio-only Committees: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 139, 1/13/2003; SB 141,
1/13/2003; SB 147, 1/13/2003;
SB 156 1/13/2003
Executive Action: None

Closing by Sponsor:

SEN. SHEA noted that the juveniles of our country are an investment for all of us. The Compact will offer an effect in their lives that will be very positive.

HEARING ON SB 141

Sponsor: **SEN. MIKE WHEAT, SD 14, BOZEMAN**

Proponents: **John Connor, Attorney General's Office and the
Department of Justice
George Corn, Ravalli County Attorney, Montana
County Attorneys Association
John M. Shontz, Montana Newspaper Association,
Jim Kembel, Montana Assoc. of Chiefs of Police**

Opponents: **None**

Opening Statement by Sponsor:

SEN. MIKE WHEAT, SD 14, BOZEMAN, introduced SB 141. He claimed this bill will modify the Montana Criminal Justice Information Act. One of the purposes of this Act was to establish effective protection of individual privacy in confidential and non-confidential criminal justice information collection, storage, and dissemination. The Act does not contain a process to release confidential criminal information to the public and the media. There is nothing in the Act addressing the length of time criminal justice information is considered confidential. In many instances, confidential criminal information is relevant in civil cases, filed after the collection of the information. In such instances, courts will require the release of the information as it relates to that civil litigation. Prosecutors and law enforcement agencies have no authority, or mechanism, for releasing such information.

This bill is an attempt to provide a mechanism to the courts and the prosecuting authorities that will expedite the release of this confidential criminal justice information when it is requested. It provides a procedural roadmap for the prosecutors to file a civil action related to the release of the information. It also aids the courts in review of the information. Nothing in the bill is intended to interfere with any existing legal rights of individuals or organizations. The bill does not prevent any individual or organization from seeking the release of information by any other legal means. The bill also provides for the release of confidential criminal justice information to fire services engaged in the criminal investigation of a fire.

He provided an amendment, **EXHIBIT(11)**. The amendment would state the procedures set forth in SB 141 are not an exclusive remedy. A person or organization could file any action for dissemination of information that the person or organization considered appropriate or permissible.

Proponents' Testimony:

John Connor, Attorney General's Office and the Department of Justice, remarked they often receive requests for file information in criminal cases they have prosecuted that tend to be high profile in nature. The media will ask to see the investigative file. However, they are not allowed to release it. They have an obligation to make information available to victims as long as it doesn't prejudice the prosecution of a case. This bill will give prosecutors a procedural means of expediting the request. They will provide the court with information in both original and redacted form so that the court can consider the request and determine what should be released. The amendment specifically states that the procedures set forth are not an exclusive remedy. This is a process for prosecutors to bring requests to the court's attention and to expedite the request. Once the litigation is finalized, they have no interest in maintaining the confidentiality but they have no process to make it available without waiting to be sued. These lawsuits can be very costly to the counties.

George Corn, Ravalli County Attorney, Montana County Attorneys Association, rose in support of SB 141. This bill involves a balancing tool in regard to the public's right to know and the right to privacy. It provides a logical process so that the district court judge can review what is appropriate to be released without invading a victim's privacy and at the same time let the public satisfy the constitutional right to know.

{Tape: 4; Side: A}

John M. Shontz, Montana Newspaper Association, rose in support of SB 141. He presented his written testimony, **EXHIBIT(12)**.

Jim Kembel, Montana Association of Chiefs of Police, rose in support of SB 141.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. JERRY O'NEIL remarked that in the situation of a rape case, a newspaper may want to review the file. If the rape victim

resisted this action, she would hire an attorney using this legislation for resisting the action. He questioned whether this was the intent of the bill. **Mr. Connor** explained that it is universally the policy of the media not to publish the names of rape or sexual assault victims. If the request was made and it appeared that information would be released that might involve the use of the name of the victim, under the terms of this bill, the prosecutor could present the court with a version of the file that had the named crossed out. He would make the argument to the court that the individual right of privacy exceeded the public's right to know.

SEN. O'NEIL questioned whether in circumstances other than rape or sexual assault, the individual would need to pay his or her own attorney's fee even though this information should not be provided. **Mr. Connor** affirmed that to be true. However, that would be the case currently.

SEN. O'NEIL questioned whether the language on page 6, lines 8 and 9, would change that law. **Mr. Connor** clarified that in the case of a witness to a crime, the person may not want his or her name released to the public. Under this bill, if an action were filed, before the information was presented to the court, he would delete the name. The witness would be a private party with a reasonable expectation of privacy. The language on lines 8 and 9 relates to the situation when prosecutors file the action. It is limited in scope only to the amendments proposed to the Act in this bill. It would be the prosecutor's responsibility to protect the individual's right to privacy. The witness could still retain an attorney but he or she would pay the attorneys fees. The county or the state should not pay the attorneys fees under the terms of this bill.

SEN. PERRY questioned whether the bill would help or hinder public access to information regarding class three sexual predators. **SEN. WHEAT** explained that the Sheriff's Office in Gallatin County posts a list of all the people required to be listed by law because they are violent or sexual offenders. **Mr. Connor** noted that this information is available on the Department of Justice's website. Anyone can access information, by county, regarding the registered violent and sexual offenders that live in a particular county.

SEN. PERRY further explained that he was addressing access to criminal activity for which the perpetrator had been convicted. **Mr. Connor** stated if a citizen requested information from him regarding the background and history of a particular offender, the information would be considered confidential criminal justice information. He could not release the investigative details. He

could provide the court records relating to the person's offense, which would include a description in the charging documents of how the offense came about. He could not provide information regarding investigative background on the individual or his criminal record which might be part of the investigative file. If the demand were made upon him, he could use this bill as a process to release the information. He could go to the court and explain that the request had been made to release the information but he did not believe he had the authority to do so without a court order. The court would then handle the matter.

SEN. MANGAN stated his understanding of the bill was if someone wanted this information, it would be necessary for the individual to ask the prosecutor to petition the judge in order to receive the information. **Mr. Connor** affirmed. He added that the individual could still hire an attorney and file a lawsuit requiring the information be released.

SEN. MANGAN stated in Great Falls there have been several older homicide cases in which the police department has reopened the cases to investigate new leads. Under the terms of this bill, would individuals be able to ask a prosecutor to provide that information? **Mr. Connor** stated this would involve an open case subject to investigation and would still be considered confidential.

SEN. MCGEE asked whether the fire service agency or fire marshal was being included because they have the primary authority for investigation of a fire. **Mr. Connor** affirmed that fire service agency representatives asked the Attorney General to prepare legislation that would enable them to access criminal justice information when they are involved in the investigation of an arson. The law does not currently acknowledge this.

CHAIRMAN DUANE GRIMES asked for more information in regard to the exclusive remedy language in the amendment as it related to the media. **SEN. WHEAT** explained if the bill passed without the amendment, the press would be forced to file a lawsuit. Their concern is because the language has a remedy for accessing that information, an argument could be made to the district judge that this is the exclusive remedy. The amendment allays those fears. If the press wanted to review the files, the amendment would allow them to file any action they deemed appropriate.

CHAIRMAN GRIMES inquired as to the confidentiality standards which were currently in place that the court would need to consider when a request is made by the press. **SEN. WHEAT** explained that there is an entire chapter in Title 44 of the Montana Code that deals with criminal justice information. It

contains sufficient information and definition of the terms to provide the court guidance in determining confidential information.

CHAIRMAN GRIMES further questioned whether the bill would change the balance of the current confidentiality standards. **SEN. WHEAT** pointed out that this involves confidential criminal investigative information from a case that has been terminated. This language is found on page 5, lines 17 and 18. On page 6, (b) the language states that when the judge is conducting the in camera inspection, it is necessary for him or her to find a specific written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. This would force the judge to make that policy decision.

CHAIRMAN GRIMES inquired as to the types of requests prosecutors received in this regard. **Mr. Connor** stated that some time ago he prosecuted some "Freemen" in eastern Montana. There was a subsequent civil lawsuit filed by two of the individuals. The court wanted to review the information in the investigative file before making any decision about whether or not to release it. This involved many boxes of information with some of the information only peripherally related to the claim. The judge told him that he didn't have the time nor the inclination to review all the information. Most recently there was a situation in Lewis and Clark County in which their office declined to prosecute a case that involved a public official. The media wanted the information. The county attorney who had asked him to assume the case, due to a conflict of interest, discussed the fact that he had just had a similar situation occur where the county had been sued and ended up going through lengthy litigation to receive information which he did not care to continue to retain. A declaratory judgement action was filed. The litigation was resolved when the request for the information was withdrawn. The process had been expedited. They can now use this mechanism. He hoped the bill would inform other people in the same situation that there is a process in the statute to allow them to expedite the delivery by going to the court instead of waiting to be sued.

{Tape: 4; Side: B}

SEN. MCGEE questioned the situation if the court decided the information should not be released. With the addition of the amendment, could the media sue the court or the county attorney. **Mr. Connor** noted that the media would be the losing party and they would have a right to appeal the decision. The court needs to review existing case law.

SEN. MCGEE claimed this should help counties in that they would not have to defend actions. **Mr. Connor** affirmed this to be the case.

SEN. PERRY asked **Mr. Shontz** if their concerns had been addressed in the hearing. **Mr. Shontz** believed they had. Their primary concern was that this would be the exclusive remedy, not only for the press but for any citizen.

Closing by Sponsor:

SEN. WHEAT summarized that the bill offers the prosecuting attorneys a mechanism for allowing the judge to decide what kind of information can be released to the public in a criminal case that has been terminated. It requires the judge to balance the individual rights of privacy against the public's right to know.

HEARING ON SB 156

Sponsor: **SEN. O'NEIL, SD 42, COLUMBIA FALLS**

Proponents: **None**

Opponents: **Andy Suenrum, State Bar of Montana**
John Connor, Chairman of the Supreme Court's
Commission on Unauthorized Practice
Molly Shepherd, Attorney
Al Smith, Montana Trial Lawyers Association

Opening Statement by Sponsor:

SEN. O'NEIL, SD 42, COLUMBIA FALLS, introduced SB 156. This bill would provide help for the resolution of legal battles for the poor, handicapped, and abused. He provided his written statement, **EXHIBIT(13)**. He further provided the dissent of Justice Terry N. Trieweller in regard to the Opinion handed down in regard to Dana M. Culver which he discussed in his statement, **EXHIBIT(14)**.

Proponents' Testimony: **None**

Opponents' Testimony:

Andy Suenrum, State Bar of Montana, rose in opposition to SB 156. The bill proposes an amendment to the Montana Constitution that would limit the Montana Supreme Court's power over admission to the bar and the conduct of its members. The language in the bill starts out to address discrimination as we presently know it and

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 22, 2003 at 9:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 164, 1/17/2003; SB 189,
1/17/2003
Executive Action: SB 35; SB 141; SB 139; SB 147; SB
73

not have any money. Increasing the fine for people who do not have any money will result in jailing these people because they do not have any money. This will just add burden to our jail system.

CHAIRMAN GRIMES added that many times people are charged with multiple offenses, depending on the circumstances.

SEN. McGEE added that this is a designer bill because it is in response to the situation that occurred in Shelby with the Shelties. Therefore, **SEN. McGEE** will not support SB 73.

SEN. CROMLEY stated that he can see increasing a fine to account for inflation, but increasing the jail time from six months to one year is probably not necessary.

Motion/Vote: **SEN. CROMLEY** moved SB 73 **BE AMENDED** to delete the increase in jail time from six months to one year. The motion **CARRIED UNANIMOUSLY**.

SEN. McGEE asked **SEN. WHEAT** whether, as a former prosecutor, he would have prosecuted an offense for each animal in the Shelby case. **SEN. WHEAT** responded that option was available, but the first priority would be getting the animals away from the owner.

SEN. McGEE then wondered if the existing language in the Code would allow him to charge multiple offenses.

SEN. WHEAT stated it could be argued either way, but prosecutors have discretion in deciding whether to charge multiple offenses.

CHAIRMAN GRIMES then stated that he was dismayed by the number of proponents attending the hearing and therefore, is not sure this bill is necessary.

Motion/Vote: **CHAIRMAN GRIMES** moved SB 73 **BE INDEFINITELY POSTPONED**. The motion **carried 6-2 with Senators Wheat and Cromley voting no, and Sen. Mangan not voting**.

(Tape : 2; Side : B)

EXECUTIVE ACTION ON SB 141

Motion: **SEN. WHEAT** moved SB 141 **DO PASS**.

Motion: **SEN. WHEAT** moved **Amendment SB014102.av1 BE ADOPTED**.

Discussion:

SEN. WHEAT explained the amendment was prepared by John Connor after he had discussions with representatives from the news media and is designed to clarify and make certain anybody that wants to gain access to confidential criminal information is not limited by this procedure set forth in SB 141. This clarifies that SB 141 is not the exclusive remedy and there are other remedies available under law.

CHAIRMAN GRIMES questioned is this was **SEN. WHEAT'S** original intention and whether they need to restrict other remedies or if this was meant to be the only avenue.

SEN. WHEAT relayed that in his discussions with John Connor and in his testimony at the hearing, they were not attempting to restrict any other avenues of remedy, and this was simply providing a mechanism for the prosecuting attorneys, whether that be at the county level or the attorney general's level. When the prosecutor receives a request for confidential criminal information, it gives them a manner in which to get the matter before the district court.

SEN. CROMLEY stated there would be violent opposition is this were to be an exclusive remedy.

CHAIRMAN GRIMES then asked **SEN. WHEAT** if he was confident the in-camera review would provide an adequate forum for considering weighing this privacy against the merits of public disclosure in a fair manner.

SEN. WHEAT replied he thought it would. The court would hear the arguments of both sides and then the court would look at the documents and make a decision as to what is private and what is not and what should be released. This is a procedure in place now, this just codifies that procedure.

CHAIRMAN GRIMES stated in many cases, it will be the media making the request. **CHAIRMAN GRIMES** is concerned about the political overtones and pressure this bill may be putting on the Court.

SEN. WHEAT feels this burden is properly placed with the district court because it is a balancing act between the constitutional right to know versus the constitutional right to privacy.

SEN. CROMLEY stated the procedure now is adversarial. This bill will be a new mechanism on the part of the state where they can say this material should be supplied anyway, so we will take the initiative and file the motion with the court.

SEN. WHEAT stated this bill will give the prosecuting attorney a vehicle to remove the matter from their jurisdiction to the court. Once the investigation has been terminated, it will allow the Attorney General to file a declaratory judgment action in the district court for it's decision.

SEN. O'NEIL questioned on page 6, paragraph (c), whether a person they would have to incur attorney fees in order to protect their own confidentiality.

SEN. WHEAT replied that the anticipated attorney fees which are the intent of this proposed legislation are intended to be borne by the parties directly involved, i.e. the party who has the information and the party who wants it. It is not directed toward a party who may be the subject of the information. Therefore, if someone had to hire an attorney to represent them, then the district court would have to make a decision, in equity, as to whether that person should have their attorney fees paid.

SEN. O'NEIL then questioned if he would be amenable to having an amendment that states that.

SEN. WHEAT stated that amendment would not change the intent of the bill. Also, **SEN. WHEAT** believes that power already exists with the court.

SEN. O'NEIL believes that power may already exist, but now we are amending that power out the way the bill reads.

Ms. Lane stated **SEN. O'NEIL** is anticipating something that is not going to happen. If someone goes to the county prosecutor and wants information about a case and, the county prosecutor cannot give them that information under law because it is confidential criminal information, this bill will allow for a procedure whereby the county attorney can turn everything over to the court and ask the court to decide. The court will weigh the individual's right of privacy against the public's right to know. **Ms. Lane** does not anticipate there would be third-party intervenors. However, under the bill right now, if there were a third-party intervenor, they would have to pay their own attorney fees.

Motion: **SEN. O'NEIL** moved to amend paragraph (c) to say that the court may, in its discretion, award attorney fees to third-party intervenors. This new language would be inserted as a new sentence after the last word "fees."

SEN. WHEAT reiterated he does not think **SEN. O'NEIL's** proposed amendment would change the intent of the bill, but does not feel

that language is necessary. He is concerned about who that third-party intervenor might be.

SEN. CROMLEY stated he believes the amendment does change the intent and gives the court the power to award attorney fees, which is an unusual power in Montana. Also, this amendment would require a fiscal note for the bill since attorney fees may be awarded to the third-party intervenor and have to be paid by the state.

SEN. O'NEIL stated if two females were picked up for sodomy, and one was a public official, and the newspaper wanted the information on the public official they could use this statute to obtain the information. The other woman, then, may want to intervene to keep the information about herself confidential. She should not, under these circumstances, have to pay attorney fees.

Vote: The motion to adopt **SEN. O'NEIL's** proposed amendment **FAILED** on a roll call vote.

Vote: The motion that **Amendment SB014102.av1 BE ADOPTED CARRIED UNANIMOUSLY. EXHIBIT(jus13a05).**

Vote: The motion that **SB 141 DO PASS AS AMENDED CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 139

Motion: **SEN. MANGAN** moved SB 139 **DO PASS.**

Discussion:

SEN. MANGAN remarked that this bill is necessary to maintain relationships with other states in the transfer of juveniles between states. Montana occasionally finds it necessary to send juveniles out of state. We are one of first states, from testimony at the hearing, to review the new compact. That compact should be ratified by at least 35 states within the next year or so.

(Tape : 3; Side : A)

SEN. MCGEE's concern with SB 139 because the stricken language deals with the juvenile compact and how they are going to talk about runaways, return of escapees, absconders, voluntary return procedure, detention practices, cooperative supervision, and so forth. The new language, on the other hand, talks exclusively

SENATE BILL NO. 141

INTRODUCED BY WHEAT

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE RELEASE OF CRIMINAL JUSTICE INFORMATION TO FIRE SERVICE AGENCIES AND FIRE MARSHALS REGARDING THE CRIMINAL INVESTIGATION OF A FIRE; PROVIDING A PROCEDURE FOR A PROSECUTOR TO PETITION THE COURT FOR RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION IN CERTAIN CASES; AMENDING SECTIONS 44-5-103 AND 44-5-303, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE AND AN~~ APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and

1 release. It includes identification information, such as fingerprint records or photographs, unless the information
2 is obtained for purposes other than the administration of criminal justice.

3 (b) Criminal history record information does not include:

4 (i) records of traffic offenses maintained by the department of justice; or

5 (ii) court records.

6 (5) (a) "Criminal intelligence information" means information associated with an identifiable individual,
7 group, organization, or event compiled by a criminal justice agency:

8 (i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting
9 potential criminal operation, or producing an estimate of future major criminal activities; or

10 (ii) in relation to the reliability of information, including information derived from reports of informants or
11 investigators or from any type of surveillance.

12 (b) Criminal intelligence information does not include information relating to political surveillance or
13 criminal investigative information.

14 (6) (a) "Criminal investigative information" means information associated with an individual, group,
15 organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a
16 crime or crimes. It includes information about a crime or crimes derived from reports of informants or
17 investigators or from any type of surveillance.

18 (b) ~~It~~ The term does not include criminal intelligence information.

19 (7) "Criminal justice agency" means:

20 (a) any court with criminal jurisdiction;

21 (b) any federal, state, or local government agency designated by statute or by a governor's executive
22 order to perform as its principal function the administration of criminal justice, including a fire agency or fire
23 marshal that conducts criminal investigations of fires;

24 (c) any local government agency not included under subsection (7)(b) that performs as its principal
25 function the administration of criminal justice pursuant to an ordinance or local executive order; or

26 (d) any agency of a foreign nation that has been designated by that nation's law or chief executive
27 officer to perform as its principal function the administration of criminal justice and that has been approved for
28 the receipt of criminal justice information by the Montana attorney general, who may consult with the United
29 States department of justice.

30 (8) (a) "Criminal justice information" means information relating to criminal justice collected, processed,

1 or preserved by a criminal justice agency.

2 (b) ¶ The term does not include the administrative records of a criminal justice agency.

3 (9) "Criminal justice information system" means a system, automated or manual, operated by foreign,
4 federal, regional, state, or local governments or governmental organizations for collecting, processing,
5 preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and
6 agreements.

7 (10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have
8 terminated and describing the nature of the termination or information relating to sentencing, correctional
9 supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal
10 proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to
11 bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

12 (b) Particular dispositions include but are not limited to:

13 (i) conviction at trial or on a plea of guilty;

14 (ii) acquittal;

15 (iii) acquittal by reason of mental disease or defect;

16 (iv) acquittal by reason of mental incompetence;

17 (v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

18 (vi) deferred imposition of sentence with any conditions of deferral;

19 (vii) nolle prosequi;

20 (viii) a nolo contendere plea;

21 (ix) deferred prosecution or diversion;

22 (x) bond forfeiture;

23 (xi) death;

24 (xii) release as a result of a successful collateral attack;

25 (xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action
26 for determination of mental incompetence or mental illness;

27 (xiv) a finding of civil incompetence or mental illness;

28 (xv) exercise of executive clemency;

29 (xvi) correctional placement on probation or parole or release; or

30 (xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

(a) information made public by law;

(b) information of court records and proceedings;

(c) information of convictions, deferred sentences, and deferred prosecutions;

(d) information of postconviction proceedings and status;

(e) information originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 2. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information -- procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of

1 individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential
2 criminal justice information under this subsection includes receiving investigative information from and sharing
3 investigative information with a fire service agency or fire marshal concerning the criminal investigation of a fire.

4 (2) If the prosecutor determines that dissemination of confidential criminal justice information would not
5 jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim
6 of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the
7 prosecutor.

8 (3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential
9 criminal justice information assumes equal responsibility for the security of the information with the originating
10 agency. Whenever confidential criminal justice information is disseminated, it must be designated as
11 confidential.

12 (4) The county attorney or the county attorney's designee is authorized to receive confidential criminal
13 justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The
14 county attorney or the county attorney's designee may, in that person's discretion, disclose information
15 determined necessary to the goals of the review team. The review team and the county attorney or the designee
16 shall maintain the confidentiality of the information.

17 (5) (a) If a prosecutor receives a written request for release of confidential criminal justice information
18 relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal
19 prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a
20 declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory
21 Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

22 (i) file the action in the name of the city or county that the prosecutor represents and describe the city's
23 or county's interest;

24 (ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice
25 information and anyone affected by release of the information;

26 (iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the
27 file with the court pursuant to the provisions of Title 27, chapter 8;

28 (iv) request the court to:

29 (A) conduct an in camera review of the confidential criminal justice information to determine whether
30 the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant whatever portion of the investigative information
or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and make its order sufficiently broad to authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to interested parties that are not joined in the litigation.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) THE PROCEDURES SET FORTH IN SUBSECTION (5) ARE NOT AN EXCLUSIVE REMEDY. A PERSON OR ORGANIZATION MAY FILE ANY ACTION FOR DISSEMINATION OF INFORMATION THAT THE PERSON OR ORGANIZATION CONSIDERS APPROPRIATE AND PERMISSIBLE."

~~NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.~~

NEW SECTION. **Section 3. Applicability.** [This act] applies to any request for confidential criminal justice information made on or after [the effective date of this act].

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 11, 2003 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: SB 128, SB 139, SB 141, 3/4/2003
Executive Action: SB 141-Be Concurred In As Amended
SB 128-Be Concurred In
SB 56-Be Concurred In and Place on
Consent Calendar

HEARING ON SB 141

Sponsor: SEN. MIKE WHEAT, SD 14, Bozeman, Montana

Opening Statement by Sponsor:

SEN. WHEAT opened the hearing on SB 141 by informing the Committee that this bill was brought forth at the request of the Department of Justice.

This bill will do two things:

- 1) Bring in Fire Investigators who are involved in the investigation of arson fires as members who can share criminal justice information (Page 2 Lines 22 and 23).
- 2) Provides a procedure for someone who wants to get the criminal justice information. This will allow the Prosecutor to file a declaratory judgement action with the Courts and then request the Courts to review the information. After the Courts review the information and decide what is appropriate to disclose, the Prosecutor may then provide that information to the requesting party.

EXHIBIT(juh51a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 47}

Proponents' Testimony:

John Connor, Montana Department of Justice (DOJ), rose in support of SB 141. He stated that when the prosecution is initiated, the DOJ does not want to hold the information; however, DOJ needs the Court's authorization to release this requested information. Oftentimes, the defense counsel will file suit in order to retrieve the requested information. Mr. Connor then gave an example of the recent City Commissioner and the Independent Record regarding a "declaratory judgement action."

{Tape: 1; Side: A; Approx. Time Counter: 47 - 127}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. NOENNIG, LASZLOFFY, and SHOCKLEY questioned Mr. Connor about the parties who would be involved, in-camera review and if the aforementioned fire marshall was already included in the present statute. Mr. Connor explained the regimen for filing a declaratory act and quiet title.

{Tape: 1; Side: A; Approx. Time Counter: 127 - 234}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SB 141.

{Tape: 1; Side: A; Approx. Time Counter: 234 - 244}

HEARING ON SB 139

Sponsor: SEN. DEBBIE SHEA, SD 18, Butte, Montana

Opening Statement by Sponsor:

SEN. SHEA opened the hearing on SB 139 by informing the Committee that the Interstate Compact Act was initiated in 1955 and the purpose of this bill is to "fine-tune" issues related to the management, monitoring and supervision aspects of the compact.

{Tape: 1; Side: A; Approx. Time Counter: 244 - 293}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:

John Paradis, State of Montana, Department of Corrections, spoke in support of SB 139. He stated this bill would address the statute that applies to runaways. Usually, within 24-48 hours a runaway can be located; however, the law states that they can be held for up to 90 days, which translate into high detention costs. The problem with this is that many of the serious and chronic offenders can "slip through the cracks."

{Tape: 1; Side: A; Approx. Time Counter: 293 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 413 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 96}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. EVERETT, FACEY, CLARK, LANGE, NOENNIG, SHOCKLEY, RICE and MALCOLM asked numerous questions from the proponents, especially Mr. Tichensky about current staffing, the legality and the authorized use of such information, and the fund where these fees when collected would be deposited.

{Tape: 2; Side: A; Approx. Time Counter: 96 - 404}

Closing by Sponsor:

SEN. MAHLUM closed the hearing on SB 139 by stating that these checks are needed and with the federal funds ceasing, this is an opportunity to recoup the loss of money.

{Tape: 2; Side: A; Approx. Time Counter: 404 - 488}

EXECUTIVE ACTION ON SB 141

Motion: REP. NOENNIG moved that SB 141 BE CONCURRED IN.

Motion: REP. NOENNIG moved that SB 141 BE AMENDED.

Discussion:

REP. NOENNIG referred to Page 6, Lines 5,6 and 7 regarding the amendment.

Vote: Motion that SB 141 BE AMENDED carried 17-1 with REP. NEWMAN voting no. (voice vote)

Motion: REP. FACEY moved that SB 141 BE CONCURRED IN AS AMENDED.

Discussion:

REPS. NEWMAN and RICE stated that this bill was unnecessary and would oppose it. REP. MALCOLM voiced concerns regarding the protection of victim's rights in privacy matters.

Vote: Motion that SB 141 BE CONCURRED IN AS AMENDED carried 17-1 with REP. RICE voting no. (voice vote)

{Tape: 2; Side: A; Approx. Time Counter: 488 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 173}

EXECUTIVE ACTION ON SB 128

Motion: REP. CLARK moved that SB 128 BE CONCURRED IN.

Discussion:

REPS. NOENNIG, LANGE, FACEY, NEWMAN, SHOCKLEY, STOKER, PARKER and GALLUS discussed SB 128 in depth regarding the funding issues that this bill would address.

Vote: Motion that SB 128 BE CONCURRED IN carried 14-4 with REPS. LASZLOFFY, MALCOLM, RICE, and SALES voting no. (voice vote)

{Tape: 2; Side: B; Approx. Time Counter: 173 - 383}

EXECUTIVE ACTION ON SB 56

Motion: REP. LASZLOFFY moved that SB 56 BE CONCURRED IN.

Discussion:

REPS. NOENNIG, FACEY, RICE, NEWMAN, PARKER, LANGE, GALLUS and LASZLOFFY discussed this bill regarding the mental defect aspects and the civil commitments for the offenders.

EXHIBIT(juh51a02)

Vote: Motion that SB 56 BE CONCURRED IN carried unanimously. (voice vote)

Vote: Motion that SB 56 be PLACED ON THE CONSENT CALENDAR carried unanimously. (voice vote)



AN ACT ALLOWING THE RELEASE OF CRIMINAL JUSTICE INFORMATION TO FIRE SERVICE AGENCIES AND FIRE MARSHALS REGARDING THE CRIMINAL INVESTIGATION OF A FIRE; PROVIDING A PROCEDURE FOR A PROSECUTOR TO PETITION THE COURT FOR RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION IN CERTAIN CASES; AMENDING SECTIONS 44-5-103 AND 44-5-303, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

- (a) criminal investigative information;
- (b) criminal intelligence information;
- (c) fingerprints and photographs;
- (d) criminal justice information or records made confidential by law; and
- (e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless the information

is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

- (i) records of traffic offenses maintained by the department of justice; or
- (ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information, including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) (a) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.

(b) ~~† The term~~ does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice, including a fire agency or fire marshal that conducts criminal investigations of fires;

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) (a) "Criminal justice information" means information relating to criminal justice collected, processed,

or preserved by a criminal justice agency.

(b) ¶ The term does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

- (i) conviction at trial or on a plea of guilty;
- (ii) acquittal;
- (iii) acquittal by reason of mental disease or defect;
- (iv) acquittal by reason of mental incompetence;
- (v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;
- (vi) deferred imposition of sentence with any conditions of deferral;
- (vii) nolle prosequi;
- (viii) a nolo contendere plea;
- (ix) deferred prosecution or diversion;
- (x) bond forfeiture;
- (xi) death;
- (xii) release as a result of a successful collateral attack;
- (xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;
- (xiv) a finding of civil incompetence or mental illness;
- (xv) exercise of executive clemency;
- (xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

(13) "Public criminal justice information" means:

(a) information made public by law;

(b) information of court records and proceedings;

(c) information of convictions, deferred sentences, and deferred prosecutions;

(d) information of postconviction proceedings and status;

(e) information originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) information considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(14) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(15) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 2. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information -- procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of

confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a fire service agency or fire marshal concerning the criminal investigation of a fire.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;

(iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;

(iv) request the court to:

(A) conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

Section 3. Applicability. [This act] applies to any request for confidential criminal justice information made on or after [the effective date of this act].

- END -

Senate Judiciary Committee
Senate Bill 141
Senator Mike Wheat, Sponsor
Hearing - January 16, 2003

Testimony of John M. Shontz

Representing the Montana Newspaper Association and its members.

Mr. Chairman and Members of the Committee:

The Montana Newspaper Association thanks Senator Wheat and Montana Attorney General Mike McGrath for bringing this bill before you today.

The Montana Newspaper Association appreciates that while not clarified in statute, a number of criminal justice agencies have availed themselves of the court system to release confidential criminal justice information by referring a requester of the information to a court of competent jurisdiction probably under the rubric of 44-5-303 (1) MCA (2001) which can be found on page four of the bill, line 30. We note that this custom applies to persons who are the subject of an investigation as well as more public institutions.

Senate Bill 141 is an attempt to put into law a procedure for members of the public (not just the news media) to gain confidential criminal justice information through the district courts in Montana. We note that the bill would require a prosecutor to file the action in district court under Montana's Uniform Declaratory Judgment Act. Please find a copy of that Act attached to these comments.

Exhibit No.

Date

SB No.

12
1-16-03
SB 141

The Association does have several concerns regarding the bill. First the bill mandates that an action be filed in district court; we are aware that criminal justice agencies have referred persons who were the subject of an investigation by a criminal justice agency to justice courts in Montana for an order releasing criminal justice information about the person. We think that Senate Bill 141 should not close that door to Montana citizens. Justice Courts offer cost effective justice in this state. We would hope that the sponsor and the Attorney General would be amenable to so amending this bill.

While at first blush, Senate Bill 141 appears to be designed to provide a simple and cost effective mechanism for the public to gain now confidential criminal justice information, we would suggest that the act may well generate substantial litigation as all parties with an interest in the information must be informed and made parties to the case. The matter may well result in a jury trial to determine if the release of the information in the file will unduly prejudice a person's right to privacy (in the event that the case is about an individual).

A requester of information may well find that the economics of litigation will prevent them from pursuing or following up a request made.

We are further concerned that the bill mandates the mechanism outlined in the bill as the only mechanism available by which a person can gain access to information currently secreted by the law.

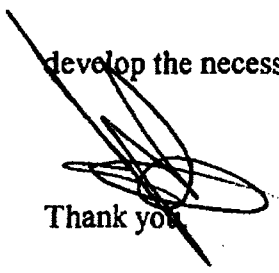
We note that the bill requires the parties to bear their costs and fees for action filed under section 5(a). We further note that Section 4 of the bill mandates that this act applies to any request for confidential criminal justice information. We suggest that Section 4 be struck from

the bill. Persons should be allowed to pursue this information under Montana's current law which allows an applicant to potentially be awarded attorneys fees and costs in the event the person prevails against the agency; if a person chooses to avail him or herself of the provision of this bill, should it pass, then the person would do so knowing he or she would be liable for his or her costs and fees without an opportunity to receive those fees and costs.

This bill should not take away a person's current right to ask justice court for relief or the right to sue the criminal justice agency under the now standing right to public documents under Montana law.

Finally, we suggest that this bill be amended to become law in the normal course of business; October 1, 2003. We suggest that Section 3 of the bill be deleted from the bill.

We would be happy to work with the sponsor the attorney general and the committee to develop the necessary amendments to address our concerns in the bill.



Thank you

Cross-References

Trial upon agreed statement of facts, 25-7-602.
 Judgment, Title 25, ch. 9.
 Findings by court, Rule 52, M.R.Civ.P. (see Title 25, ch. 20).
 Judgments — costs, Rule 54, M.R.Civ.P. (see Title 25, ch. 20).

27-7-103. Entry of judgment — costs. Judgment must be entered in the judgment book as in other cases but without costs for any proceeding prior to the trial.

History: En. Sec. 300, p. 106, Bannack Stat.; re-en. Sec. 356, p. 207, L. 1867; re-en. Sec. 430, p. 121, Cod. Stat. 1871; re-en. Sec. 456, p. 163, L. 1877; re-en. Sec. 456, 1st Div. Rev. Stat. 1879; re-en. Sec. 469, 1st Div. Comp. Stat. 1887; re-en. Sec. 2051, C. Civ. Proc. 1895; re-en. Sec. 7255, Rev. C. 1907; re-en. Sec. 9873, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1139; re-en. Sec. 9873, R.C.M. 1935; R.C.M. 1947, 93-9502; amd. Sec. 31, Ch. 12, L. 1979.

27-7-104. Enforcement of judgment — appeal. The judgment may be enforced in the same manner as if it had been rendered in an action and is in the same manner subject to appeal.

History: En. Sec. 301, p. 106, Bannack Stat.; re-en. Sec. 357, p. 207, L. 1867; re-en. Sec. 431, p. 121, Cod. Stat. 1871; re-en. Sec. 457, p. 163, L. 1877; re-en. Sec. 457, 1st Div. Rev. Stat. 1879; re-en. Sec. 470, 1st Div. Comp. Stat. 1887; re-en. Sec. 2052, C. Civ. Proc. 1895; re-en. Sec. 7256, Rev. C. 1907; re-en. Sec. 9874, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1140; re-en. Sec. 9874, R.C.M. 1935; R.C.M. 1947, 93-9503.

Cross-References

Trial upon agreed statement of facts, 25-7-602.
 Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 8**UNIFORM DECLARATORY JUDGMENTS ACT****Part 1 — General Provisions**

- 27-8-101. Short title.
- 27-8-102. Purpose — liberal construction.
- 27-8-103. Uniformity of interpretation.
- 27-8-104. Definition of person.

Part 2 — Availability of Declaratory Judgments

- 27-8-201. Scope of power to render declaratory judgments.
- 27-8-202. Who may obtain declaratory judgment.
- 27-8-203. When contract may be construed.
- 27-8-204. Declarations concerning administration of trusts and estates.
- 27-8-205. Enumeration not restrictive of general powers.
- 27-8-206. Court's discretion to refuse to render judgment.

Part 3 — Procedure

- 27-8-301. Necessary parties.
- 27-8-302. Jury trial.
- 27-8-303 through 27-8-310 reserved.
- 27-8-311. Costs.
- 27-8-312. Review of orders and judgments.
- 27-8-313. Supplemental relief.

Part 1**General Provisions**

27-8-101. Short title. This chapter may be cited as the "Uniform Declaratory Judgments Act".

History: En. Sec. 16, Ch. 16, L. 1935; re-en. Sec. 9835.16, R.C.M. 1935; R.C.M. 1947, 93-8916.

27-8-102. Purpose — liberal construction. This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

History: En. Sec. 12, Ch. 16, L. 1935; re-en. Sec. 9835.12, R.C.M. 1935; R.C.M. 1947, 93-8912.

27-8-103. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

History: En. Sec. 15, Ch. 16, L. 1935; re-en. Sec. 9835.15, R.C.M. 1935; R.C.M. 1947, 93-8915.

27-8-104. Definition of person. The word "person", wherever used in this chapter, shall be construed to mean any person, partnership, joint-stock company, unincorporated association, or society or municipal or other corporation of any character whatsoever.

History: En. Sec. 13, Ch. 16, L. 1935; re-en. Sec. 9835.13, R.C.M. 1935; R.C.M. 1947, 93-8913.

Part 2

Availability of Declaratory Judgments

27-8-201. Scope of power to render declaratory judgments. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

History: En. Sec. 1, Ch. 16, L. 1935; re-en. Sec. 9835.1, R.C.M. 1935; R.C.M. 1947, 93-8901.

27-8-202. Who may obtain declaratory judgment. Any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

History: En. Sec. 2, Ch. 16, L. 1935; re-en. Sec. 9835.2, R.C.M. 1935; R.C.M. 1947, 93-8902.

27-8-203. When contract may be construed. A contract may be construed either before or after there has been a breach thereof.

History: En. Sec. 3, Ch. 16, L. 1935; re-en. Sec. 9835.3, R.C.M. 1935; R.C.M. 1947, 93-8903.

27-8-204. Declarations concerning administration of trusts and estates. A person interested as or through an executor, administrator, trustee, guardian, other fiduciary, creditor, devisee, heir, or cestui que trust in the administration of a trust or of the estate of a decedent, minor, person committed pursuant to 53-21-127, or insolvent person may have a declaration of rights or legal relations:

- (1) to ascertain any class of creditors, devisees, heirs, or others;
- (2) to direct the executors, administrators, or trustees to do or abstain from doing a particular act in their fiduciary capacity; or
- (3) to determine a question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

History: En. Sec. 4, Ch. 16, L. 1935; re-en. Sec. 9835.4, R.C.M. 1935; R.C.M. 1947, 93-8904; amd. Sec. 32, Ch. 12, L. 1978; amd. Sec. 5, Ch. 490, L. 1997.

27-8-205. Enumeration not restrictive of general powers. The enumeration in 27-8-202 through 27-8-204 does not limit or restrict the exercise of the general powers conferred in 27-8-201 in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

History: En. Sec. 5, Ch. 16, L. 1935; re-en. Sec. 9835.5, R.C.M. 1935; R.C.M. 1947, 93-8905.

27-8-206. Court's discretion to refuse to render judgment. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

History: En. Sec. 6, Ch. 16, L. 1935; re-en. Sec. 9835.6, R.C.M. 1935; R.C.M. 1947, 93-8906.

Part 3 Procedure

27-8-301. Necessary parties. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard.

History: En. Sec. 11, Ch. 16, L. 1935; re-en. Sec. 9835.11, R.C.M. 1935; R.C.M. 1947, 93-8911.

27-8-302. Jury trial. When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

History: En. Sec. 9, Ch. 16, L. 1935; re-en. Sec. 9835.9, R.C.M. 1935; R.C.M. 1947, 93-8909.

27-8-303 through 27-8-310 reserved.

27-8-311. Costs. In any proceeding under this chapter the court may make such award of costs as may seem equitable and just.

History: En. Sec. 10, Ch. 16, L. 1935; re-en. Sec. 9835.10, R.C.M. 1935; R.C.M. 1947, 93-8910.

27-8-312. Review of orders and judgments. All orders, judgments, and decrees under this chapter may be reviewed as other orders, judgments, and decrees.

History: En. Sec. 7, Ch. 16, L. 1935; re-en. Sec. 9835.7, R.C.M. 1935; R.C.M. 1947, 93-8907.

27-8-313. Supplemental relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by a declaratory judgment or decree to show cause why further relief should not be granted forthwith.

History: En. Sec. 8, Ch. 16, L. 1935; re-en. Sec. 9835.8, R.C.M. 1935; R.C.M. 1947, 93-8908.

CHAPTER 9 CONFESSION OF JUDGMENT

Part 1 — General Provisions

27-9-101. When and in what courts judgment may be confessed.

27-9-102. Requirement of signed, verified statement by defendant.

27-9-103. Filing and costs — district court.

27-9-104. Filing and costs — justice's court.

Part 1 General Provisions

27-9-101. When and in what courts judgment may be confessed. Subject to 28-2-709, a judgment by confession may be entered without action, either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts. Judgment upon confession may be entered up in any justice's court specified in the confession, as provided in this chapter.

History: Ap. p. Sec. 297, p. 105, Bannack Stat.; re-en. Sec. 352, p. 206, L. 1867; re-en. Sec. 426, p. 120, Cod. Stat. 1871; amd. Sec. 452, p. 162, L. 1877; re-en. Sec. 452, 1st Div. Rev. Stat. 1879; re-en. Sec. 465, 1st Div. Comp. Stat. 1887; re-en. Sec. 2040, C. Civ. Proc. 1895; re-en. Sec. 7250, Rev. C. 1907; re-en. Sec. 9868, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1132; re-en. Sec. 9868, R.C.M. 1935; Sec. 93-9401, R.C.M. 1947; Ap. p. Sec. 1620, C. Civ. Proc. 1895; re-en. Sec. 7046, Rev. C. 1907; re-en. Sec. 9679, R.C.M. 1921; Cal. C. Civ. Proc.

**MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE**

DATE 1-16-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		

DATE January 16, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: 139, 141, 147, & 156

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPINION
J. LOREN LUCKER	683-5745 275-4042 843-4325	Fifth Judicial District	147		X
Judge K. Kreuger		Second Judicial District	147		X
Judge J. Whelan		" " "	147		X
DAVID CYBULSKI	406-286-5615	15th Judicial District	147		X
John Connor	444-5791	Atty General	141	X	
John Connor	443-5256	Self	156		X
Frank Nelson	843-4277	Madison County	147		X
John Bloomquist	443-2211	Self	147		X
Ted Coffman	843-4277	MADISON County	147		X
Mike McKinley	683-3750	Beaverhead County	147		X
Jim Kembel	SB 141	Mt ASSOC. OF CHIEFS OF POLICE (MACOP)	141	X	
Robert Zenker	684-5029	Madison County	147		X
Michael Larson	683-4301	5th Judicial District Bar Association	147		X
DAVID THOMPSON	457-5300	SELF	147		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Andy Suenran		Self	147		X
Andy Suenran	683-2371	St Br of Monan	156		X
John Shante	442-6520	MNA	141	X	
Bill Tash	683-9826	SD-17	147		X
Matthew Johnson	225-4012	Self and Jefferson County	147		X
Harold Blatter	442-5209	MAC	147		✓
Jim Fall	443-2850	MNA	141	✓	
Al Smith	443-3124	MTLA	147		X
Charles Brooks	698-2380	Yellowstone County	144		
George CORN	375-6200	Russell County	141	X	
Bob McARTHUR	447-1235	Butte-Silver Bow	141	X	
Kori Maloney	497-6351	Butte Silver Bow	147		X
Al Smith	443-3124	MTLA	156		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE January 16, 2003

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: 139, 141, 147 & 156

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Sheila Brunkhorst	682-3725	Beaverhead County	147		X
Burke Bailey	843-4230	MADISON County	147		X
<i>[Signature]</i>	723-2451	Bull's Silver Bow	147		X
Dorothy McCant	447-8205	District Court	147	informational only	
Donna J. Sevalstad	683-3750	BH County	147		X
Maureen A. Galt	225-3976	Jefferson Co. District	147		X
Steven Shapiro	449 1200	self	147		X
Michael C. Riey	683-5515	Beaverhead County	147		X
Debby Barrett	681-3177	HD 34	147		X
Willy Condon	683-3730	Bull City	147		X
Molly Shepherd	721-3400	self	156		X
Bob McEwen	497-6238	Bull's Silver Bow	147		X
John Paradis	444-6409	DOC.	139	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Amendments to Senate Bill No. 141
1st Reading Copy

Requested by Senator Mike Wheat

For the Senate Judiciary Committee

Prepared by Valencia Lane
January 15, 2003 (11:35am)

1. Title, line 9.

Strike: "AN IMMEDIATE EFFECTIVE DATE AND"

2. Page 6, line 10.

Following: line 9

Insert: "(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

3. Page 6, line 11.

Strike: section 3 in its entirety

Renumber: subsequent section

- END -

**MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ATTENDANCE**

DATE 1-22-03

NAME	PRESENT	EXCUSED	ABSENT
SEN. BRENT CROMLEY	✓		
SEN. AUBYN CURTISS	✓		
SEN. JEFF MANGAN	✓		
SEN. JERRY O'NEIL	✓		
SEN. GERALD PEASE	✓		
SEN. GARY PERRY	✓		
SEN. MIKE WHEAT	✓		
SEN. DAN MCGEE, VICE CHAIRMAN	✓		
SEN. DUANE GRIMES, CHAIRMAN	✓		



SENATE STANDING COMMITTEE REPORT

January 22, 2003

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 141** (first reading copy-- white) do pass as amended.

Signed:

A handwritten signature in black ink, appearing to read "Duane Grimes".

Senator Duane Grimes, Chair

And, that such amendments read:

1. Title, line 9.

Strike: "AN IMMEDIATE EFFECTIVE DATE AND"

2. Page 6, line 10.

Following: line 9

Insert: "(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

3. Page 6, line 11.

Strike: section 3 in its entirety

Renumber: subsequent section

- END -

Committee Vote:

Yes 9, No 0.

131332SC.ssc

SP

**MONTANA SENATE
2003 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE**

DATE 1.22.03 BILL # SB 141 AMENDMENT #

MOTION: Sen. O'Neil's amendment to add
"However, the court may, in its discretion,
award attorney fees to third-party
intervenor's." Page 6, line 9.

NAME	AYE	NO
SEN. BRENT CROMLEY		✓
SEN. AUBYN CURTISS	✓	
SEN. JEFF MANGAN		✓
SEN. JERRY O'NEIL	✓	
SEN. GERALD PEASE		✓
SEN. GARY PERRY	✓	
SEN. MIKE WHEAT		✓
SEN. DAN MCGEE, VICE CHAIRMAN	✓	
SEN. DUANE GRIMES, CHAIRMAN		✓

Amendments to Senate Bill No. 141
1st Reading Copy

Requested by Senator Mike Wheat

For the Senate Judiciary Committee

Prepared by Valencia Lane
January 15, 2003 (11:35am)

1. Title, line 9.

Strike: "AN IMMEDIATE EFFECTIVE DATE AND"

2. Page 6, line 10.

Following: line 9.

Insert: "(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

3. Page 6, line 11.

Strike: section 3 in its entirety

Renumber: subsequent section

- END -

EXHIBIT NO. 11
Date 1-16-03
Bill No SB 141

2/11/03
147

DEPARTMENT OF JUSTICE
SB 141: Providing a Procedure for Release of Confidential Criminal
Justice Information

Background

Montana's Criminal Justice Information Act does not contain a process to release confidential criminal justice information – like reports related to a crime – to the public and the media. There is also nothing in the act regarding the length of time criminal justice information is considered confidential.

In many instances, confidential criminal justice information is relevant to civil actions filed after the collection of the information. In such situations, courts will require the release of the information as it relates to the civil litigation.

Otherwise, however, prosecutors and law enforcement agencies have no authority to – or mechanism for – releasing such information.

For example, in cases in which the information relates to a public official, public employee or other public figure, the media may request information, citing the public's right to know. In such a case, however, a prosecutor's only option is to decline the request and wait to be sued.

The resulting litigation can be time-consuming and costly for all the parties involved, including the court with jurisdiction in the case.

The Bill

SB 141 is an attempt to put into law a procedure that will expedite the release of confidential criminal justice information when it is requested.

- It provides a procedural "roadmap" for prosecutors to file a civil action related to the release of the information.
- It also aids the court in its review of the information.

Nothing in the bill is intended to interfere with any existing legal rights of individuals or organizations. SB 141 does not prevent such individuals or organizations from seeking the release of information by other legal means.

The bill also provides for the release of confidential criminal justice information to fire services engaged in the criminal investigation of a fire.

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 3/11/03

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JEFF LASZLOFFY, VICE CHAIR MAJORITY	X		
REP. PAUL CLARK, VICE CHAIR MINORITY	X		
REP. SCOTT SALES	X		
REP. MIKE LANGE	X		
REP. DIANE RICE	X		
REP. CHRISTOPHER HARRIS	X		
REP. TOM FACEY	X		
REP. STEVE GALLUS	X		
REP. JOHN PARKER	X		
REP. HOLLY RASER	X		
REP. MARK NOENNIG	X		
REP. BRUCE MALCOLM	X		
REP. BILL THOMAS	X		
REP. RON STOKER	X		
REP. GAIL GUTSCHE	X		
REP. GEORGE EVERETT	X		
REP. BRAD NEWMAN	X		
REP. JIM SHOCKLEY, CHAIRMAN	X		



HOUSE STANDING COMMITTEE REPORT

March 11, 2003

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 141** (third reading copy -- blue) be concurred in as amended.

Signed: _____

Representative Jim Shockley, Chair

To be carried by Representative Jim Shockley

And, that such amendments read:

1. Page 6, line 5.

Strike: "make its order sufficiently broad to"

2. Page 6, line 6 through line 7.

Strike: "interested" on line 6 through "litigation" on line 7

Insert: "persons who request the information"

- END -

Committee Vote:

Yes 17, No 1.

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3-11-03
22

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3/11/03

Bill No. SB 141 Sponsor(s) Sen. Wheat

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Name and Address	Representing	Support	Oppose	Inf.
John Connor	DOT/AG	☒	☐	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.